

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT T. WHITE and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Champaign, Ill.

*Docket No. 96-2019; Submitted on the Record;
Issued August 6, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has met his burden of proof to establish that he sustained an emotional condition while in the performance of duty.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to meet his burden of proof to establish that he sustained an emotional condition while in the performance of duty.

On September 26, 1994 appellant, then a mail processor, filed a claim for an occupational disease (Form CA-2) alleging that he first became aware that his stress was caused or aggravated by his employment on that date. Appellant stopped work on September 26, 1994 and returned to work on September 29, 1994. Appellant's claim was accompanied by medical evidence and the employing establishment's October 12, 1994 letter controverting appellant's claim.

By letter dated November 28, 1994, the Office of Workers' Compensation Programs advised appellant that the evidence submitted was insufficient to establish his claim. The Office also advised appellant to submit factual and medical evidence supportive of his claim. By letter of the same date, the Office advised the employing establishment to submit a description of appellant's position and comments regarding appellant's allegations.

By decision dated August 16, 1995, the Office found the evidence of record insufficient to establish that appellant sustained an emotional condition in the performance of duty. In a September 8, 1995 letter, appellant requested an oral hearing before an Office representative. By decision dated May 29, 1996, the hearing representative affirmed the Office's August 16, 1995 decision.

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by factors of his federal employment. To establish his claim that he sustained

an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; (2) medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.¹

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the coverage of workers' compensation law. When an employee experiences an emotional reaction to his or her regular or specially assigned work duties or to a requirement imposed by the employment, or has fear and anxiety regarding his or her ability to carry out his or her duties, and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability comes within the scope of the Federal Employees' Compensation Act. On the other hand, where the disability results from an employee's emotional reaction to employment matters that are not related to the employee's regular or specially assigned work duties or requirements of the employment, the disability does not fall within the coverage of the Act.² Disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his or her frustration from not being permitted to work in a particular environment or to hold a particular position. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.³

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.⁴ Therefore, the initial question presented in the instant case is whether appellant has alleged compensable factors of employment that are substantiated by the record.

Appellant has alleged that the employing establishment improperly reassigned him, and mismanaged its employees and work. Specifically, appellant alleged that on September 26, 1994, he was performing a task on the "DBCS #3," when Karen Williams, a "204B" supervisor trainee, told him to work on the "DBCS #1." Appellant further alleged that he tried to explain to Ms. Williams that he was working on his assigned machine, but that Ms. Williams ordered him to work on the "DBCS #1." Appellant stated that when he arrived at the location of the "DBCS

¹ *Wanda G. Bailey*, 45 ECAB 835 (1994); *Kathleen D. Walker*, 42 ECAB 603, 608-609 (1991).

² *Donna Faye Cardwell*, 41 ECAB 730 (1990); *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Raymond S. Cordova*, 32 ECAB 1005 (1981); *Lillian Cutler*, *supra* note 2.

⁴ *Margaret S. Kryzcki*, 43 ECAB 496, 502 (1992); *Lillian Cutler*, *supra* note 2.

#1,” two coworkers, Lloyd Aden and Jeff Pullen, were working on the machine and that the latter stated that his help was not needed. Appellant also alleged that a similar incident occurred on September 24, 1994. Appellant filed a grievance regarding the September 26, 1994 incident. The Board finds that these allegations relate to administrative or personnel matters unrelated to appellant’s regular or specially assigned work duties and do not fall within the coverage of the Act.⁵ However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board must examine whether the employing establishment acted reasonably.⁶

There is no evidence of error or abuse in this case regarding appellant’s allegation that he was improperly reassigned by the employing establishment and that the employing establishment engaged in mismanagement. In an undated narrative statement, Ray Reffett, a “MDO T-1,” stated that the automation department was understaffed and that not only appellant, but also all the other automation clerks were shuffled from machine to machine and from program to program. Mr. Reffett also stated that there were times where a machine was staffed by 1 person for no more than 45 minutes to 1 hour. Mr. Reffett further stated that there were times where management had to adjust its resources to meet dispatches and that the September 26, 1994 incident constituted such a time. Mr. Reffett then stated that appellant would not have been working by himself for a very long period of time, probably a maximum of 30 minutes. Mr. Reffett explained how automation was staffed by its employees and that appellant was not asked to perform more or less work rather, Mr. Reffett stated that appellant was only asked to perform his job. In addition, appellant’s grievance regarding the September 26, 1994 incident was denied. The Board, therefore, finds that appellant has failed to establish error or abuse by the employing establishment in handling his reassignment and managing its employees and work.

Appellant has also alleged that he performed his work duties while his coworkers just stood around and did nothing. Inasmuch as appellant has failed to submit any evidence to support this allegation, the Board finds that appellant has not established a compensable employment factor.

Accordingly, appellant has not met his burden of proof to establish that he sustained an emotional condition while in the performance of duty. Therefore, the Board finds that it is unnecessary to address the medical evidence in this case record.⁷

⁵ *James W. Griffin*, 45 ECAB 774 (1994).

⁶ *Margreate Lublin*, 44 ECAB 945 (1993).

⁷ *Margaret S. Kryzcki*, *supra* note 4.

The May 29, 1996 and August 16, 1995 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, D.C.
August 6, 1998

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member